1947

File No. O. B. R. T/47

Legal **DEPARTMENT**

A **BRANCH**

Subject:— Opinions under the Bombay

Revenue Tribunal Act

File No. O B.R.T/47

Std. Sect. Slip 24 B e.

85-A

C O N T E N T S.

Legal Department Vol. No. O.B.R.T. / 1947

Sr. No.	Compilation No.	Subject	pages
	O.B.R.T.No.A/1947	Opinions under the Bombay Revenue Tribunal Act, 1939.	
1.	R.I.no. 11002/4.12.46, O.No. 523/16.1.47	Re: Appeal filed by Shri P.S. Patel of Navagam before the B.R.T. against the order of the Collector of Kaira forfeiting S.Nos.95 and 97 to 102 granted to him under the old and impartible tennure. B.R.T. decided the case on merits and took a very compassionate view of the matter set aside the Collector's order condoned the breach and recommended to Govt. that the land should be continued to the grants and other accupantsen the ordinary tennure. Question 1) Whether Govt. should propose a hearing ofthe case on merits; or 2) Whether Govt. should acquiwsce in the B.R.T.'s decision as proposed to be amended by it i.e. deleting the portion condoning the breach from its order.	

Sd. 17-11-55

S.C.- 3-5.

11002
4-12-46

Submitted,

Mr. Parshotamdas Shamalbhai Patel, of Nawagam, taluk Kapadwanj, district Kaira, has filed an appeal before the Bombay Revenue Tribunal against the order of the Collecto of Kaira No. L.N.D. 3071, dated 16-4-1945 forfieting S.No 95 and 97 to 102 at Nawagam granted to the appellant unde the old and impartible tenure.

2. The lands in dispute were put to public auction in 1933 and were granted on old and impartible tenure to the appellant who had offered a final bid of Rs. 413/- The grant was sanctioned by the Distirct Deputy Collector by his order No. L.N.D./29 dated 26-4-1933 and it was directed by the same order that the necessary Kabulyat (agreement) should be taken from the appellant before he was permitted to occupy the lands. It is reported, and the appellant also admits in his petition of appeal that an agreement in Form F-I of the Land Revenue Rules, was taken from him and pursuant to this grant the Lands were entered in the appellant's name in the Record of Rights by an ehtry dated 16-7-1933.

3. On 13-10-1933 the appellant partitioned the lands granted to him under an oral agreement as under.-

Names of transferees.

(1) Shankerbhai Ambaidas.	S.Nos.	100-101.
(2) Chaturbhai Maganbhai.	S.No.	102.
(3) Chhagabhai Ambaidas.	S.No.	95.
(4) Appellant.	S.Nos.	97,98 and 99.

According materious were made in the Record of Rights.

4. On 20-2-1937 the Talati of Kapadwanj reported to the Mamlatdar that the appellant had committed a breach of the conditions of the grant by partitioning the S.Nos. granted to him amongst others. After inquiring into the matter the Mamlatdar reported to the District Deputy Collector on 14-4-1937 stating that at the time of taking the lands the appellant had raised money from the transferees by promising the partnership in the lands, that the partition was of the S.Nos. as a whole and hence there was no breach of the impartible tenure. The Prant Officer has however disagreed with him and ordered forfeiture of the lands on the ground that all the S.Nos. which were situated in one block constituted a single holding and consequently the condition of impartibility applied to the entire holding thus constituted and not to each S.No. , that the appellant could dispose of the entire, block, but could not sub-divide it and therefore there was a clear breach of the conditions of impartibility. However, on a further report from the Mamlatdar, the Prant Officer ordered on 20-5-1937 that the appellant should be asked to get the sale deed cancelled and refund the purchase money to the transferees. As the partition was by oral agreement the Talati made mutatious on 1-6-1937 and the papers were therafter filed.

5. On 29th December 1944, Patel Bhulabhai Becharbhai and others made an application to the District Deputy Collector stating that the appellant had leased lands in dispute to individual tenants and thereby commited a breach of the conditions on which they were granted to him. On 9-1-1945 the Prant Officer passed an order rejecting the request of petitioners to order the forfeiture of

the land. He held that ~~them~~ three S.Nos., were cultivated by the appellant himself and four S.Nos. had been leased to the cousin of the appellant, that this did not constitute a breach of conditions of impartibility. Against this order the petitioners namely Shankerbhai and others preferred anappeal to the Collector who allowed the appeal and ordered forfeiture of the lands on the ground that the lands were granted in one block to the appellant, that no portion of it could be sold or leased and consequently the appellant had committed a clear breach of the conditions of impartibility. Against this order the appellant has preferred the present appeal to the Bombay Revenue Tribunal

6. The appellant admits that the lands were granted to him on old and impartible tenure and that he executed an agreement in Form No. F-I of the Land Revenue Rules. He contends however that no ~~sought~~ single S.No. has been partitioned or leased except as a whole and that the Collector's interpretation of the grant that the S.Nos. were granted in the block and constituted a single holding, is not correct. The Commissioner R.D., a member of the B.R.T is of the opinion that having regard to the fact that the agreement in Form F-I executed by the ~~appellant~~ appellant is missing and that the order sanctioning the grant is not clear. It is open to the appellant to contend that the grant was of units of S.Nos. He further recommends that since there is no permenant partition, the breach may be condoned this time and the Collector may be asked to warn the appellants that no such breach will be allowed in future. The president of the Tribunal has requested Govt. to put in a written statement showing cause why the appeal should not be allowed and the order of the Collector set aside.

7. In order forfeiture of the S.Nos. in dispute the Collector has relied upon the conditions of impartibility incorporated in Form F-I which is as under.-

"that I, my heirs, assigns and legal representatives

shall not, at any time, by partition, inheritance, lease, mortgage or otherwise howsoever, transfer said land except as a whole or allow any portion of it to be cultivated, used, or occupied by any other personso as to divide it". However in the absence of the original agreement whm which is reported to be missing, it cannot be presumed, as the Collecotr appears to have done, that the S.Nos. were granted in one block constituting a single holding. There is nothing in the Deputy Collector's order dated 20-4-1933 to justify this interpretation, nor is there anything in the entries in the Record of Rights made pursuant to that order to show that these S.Nos. were granted to the appellant has a single holding. All that can be gathered from the Deputy Collector's order is that the auction of several S.Nos. xx on an impartible tenure was sanctioned in favour of the appellant who had offered the xixix final bid of Rs. 413/- There is no other evidence to show that the lands were sold in one block and constituted a single holding. Moreover as observed by the Commissioner, there is no other exidex permanent partition of the S.Nos. In the circumstances the Commissioner's recommendation appears reasonable and may be accepted".

Sd/
7-1-46

I suggest the following reply.

From the order No. I.N.D. 1/29, dated 26th April 1933 made by the District Deputy Collector in the present case it appears that the grant was made under rule 37 of the Land Revenue Rules, 1921.

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Sub-rule (1) of that rule speaks of "any unoccupied survey number" while in sub-rules (3) and (4) the land is referred to obviously "land" in sub-rules (3) and (4) means an unoccupied survey number disposed of under sub-section (1). Consequently in the absence of anything to the contrary in the kabulayat the survey numbers included in the grant cannot be considered as the block granted on an impartible tenure under sub-rule (4) but each survey number will have to be considered as the unit granted on such tenure. It would not be possible to defend the Collector's appeal as itdd deems fit.

R.K. 9-1-1947

U.R. to R.D. No. 523 dated 16-1-1947.

C.C. 4 Copies 11-5-